

NOTICE OF PROPOSED RULEMAKING

TITLE 15. CRIME PREVENTION AND CORRECTIONS

DIVISION 2. BOARD OF PAROLE HEARINGS

(formerly known as “Board of Prison Terms”)

CHAPTER 3. Parole Release

ARTICLE 3. Prisoner Rights

Amendment to Section 2253

Voluntary Waivers, Stipulations of Unsuitability, Postponements, and Continuances

NOTICE IS HEREBY GIVEN that the Board of Parole Hearings (board) proposes to amend California Code of Regulations (CCR), title 15, section 2253 concerning lifer parole consideration hearings and the circumstances under which they may be delayed.

AUTHORITY AND REFERENCE

Government Code section 12838.4 and Penal Code sections 3052 and 5076.2 authorize the board to amend the proposed regulation. The proposed amended regulation implements, interprets and makes specific Penal Code sections 1170.2, 3041.5, and *In Re Rutherford* SC 135399A.

PUBLIC HEARING

The board has not scheduled a public hearing on this proposed regulatory action. However, the board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

The purpose of the public hearing is to receive oral comments about the proposed regulation. It is not a forum to debate the proposed regulation. No decision regarding the permanent adoption of these regulations will be rendered at this hearing. Written or facsimile comments submitted during the prescribed comment period have the same significance and influence as oral comments presented at a public hearing. The board members will not be present at the public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the board. **THE WRITTEN COMMENT PERIOD ON THIS PROPOSED REGULATORY ACTION WILL COMMENCE ON APRIL 25, 2008, AND WILL CLOSE AT 5:00 P.M. ON JUNE 9, 2008.** In order for the comments to be considered by the board, they must be submitted in writing (by mail, fax or e-mail) to the board's Contact Person identified in this Notice no later than the close of the comment period.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the circumstances under which a lifer parole consideration hearing may be delayed. The proposed amended regulation identifies guidelines for the granting of voluntary waivers, stipulations of unsuitability, postponements, and continuances of lifer parole consideration hearings, while at the same time preserving the rights and interests of all persons properly appearing before the board.

Penal Code section 3041 establishes that the Board of Parole Hearings shall conduct a suitability hearing at least one year prior to the inmates minimum eligible parole release date, and shall normally set a parole release date as provided in Section 3041.5. If a parole date is not set, section 3041.5 establishes the timeframe for scheduling a subsequent hearing. Penal Code section 3041.5 requires that at any lifer parole consideration hearing the prisoner shall be permitted to review his or her file, be present at the hearing to ask and answer questions, and to speak on his own behalf. Pursuant to Penal Code section 1170.2, eligibility to parole shall not be affected regardless if the prisoner was sentenced prior to or after July 1, 1977.

Subsection (b) of the amended regulation provides a mechanism for a life prisoner to voluntarily waive his or her parole consideration hearing for any reason by writing to the board and stating the reason for the request. A prisoner with a life offense may waive the life parole consideration hearing for one, two, three, four, or five years from the date of the scheduled hearing. The text includes the calendar deadlines for making such a request.

Subsection (c) of the amended regulation provides for stipulations of unsuitability that may be made at any time prior to a life parole consideration hearing. This stipulation must be in writing and submitted to the board stating the reasons that support unsuitability. The board will retain discretion to accept or reject the offer to stipulate.

Subsection (d) of the amended regulation provides for postponements which may be made by the Hearing Panel Chair or Board Executive Officer upon its own motion or at the request of a prisoner, due to the unavailability of a hearing panel, defective notices, absence of or untimely documents, reports, or required prisoner accommodations; or exigent circumstances such as illness of the attending parties, natural disasters or emergencies. The board may grant a prisoner's request for postponement for other reasons only upon a showing of good cause. Additional calendar and notice procedures are outlined in this portion of the text.

Subsection (e) of the amended regulation provides for continuances which are necessary on occasion after a lifer parole consideration hearing has commenced. They are granted upon a showing of good cause which could not have been known by the party requesting the continuance prior to the commencement of the hearing. In such a case, the District Attorney and/or the victim or victim's next of kin or designated representative may elect to give a statement on the record before the hearing is continued and this statement shall be made available to subsequent hearing panels.

DISCLOSURES REGARDING THE PROPOSED ACTION

Local Mandates: The board has determined that the proposed action imposes no mandate upon local agencies or school districts.

Fiscal Impact Statement: The board has made the following initial determinations:

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: **None**
- Cost or savings to any state agency: **None**
- Other non-discretionary cost or savings imposed on local agencies: **None**
- Cost or savings in federal funding to the state: **None**

Significant Statewide Adverse Economic Impact on Business: The board has determined that there is no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effects on Job and/or Business Creation, Elimination or Expansion: The board has determined that adoption of this regulation will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing business within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on Housing Costs: The board has made an initial determination that the proposed action will have no significant effect on housing costs.

Small Business Determination: The board has determined that the proposed regulation does not have a significant adverse economic impact on small business because small businesses are not affected by the internal management of State prisons.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested parties are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes during the public comment period.

CONTACT PERSON

Please direct requests for copies of the Initial Statement of Reasons, the proposed amended text of the regulation, or other information upon which the rulemaking is based to:

Elizabeth Geiger, Regulations Coordinator
Board of Parole Hearings
PO Box 4036
Sacramento, CA 95812-4036
Telephone: (916) 324-6434
Facsimile: (916) 445-4086
E-mail: Elizabeth.Geiger@cdcr.ca.gov

In any such inquiries, please identify the action by using the board's regulation control number RN 08-01.

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: Devaney Sullivan at (916) 322-6815 or Devaney.Sullivan@cdcr.ca.gov.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS

The board will make the rulemaking file available to the public throughout the rulemaking process at its offices located at 1515 S Street, Suite 600, Sacramento, California. As of the date this Notice is published in the Office of Administrative Law's Notice Register, the rulemaking file consists of this Notice, Form 400 (Notice of Submission of Regulations), the proposed text of the regulation, Initial Statement of Reasons and Form 399 (Fiscal Impact Statement). Copies of these documents may be obtained by contacting the board's Contact Person at the address or phone number listed above or by visiting the board's Web site at:
http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the board may adopt the proposed regulations substantially as described in this Notice. If the board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the board adopts the regulations as revised. Please send requests for copies of any modified regulation text to the attention of the Contact Person identified in this Notice or by visiting the board's Web site at http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html. The board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained from the board's Regulation Coordinator or by visiting the board's Web site at:

http://www.cdcr.ca.gov/Divisions_Boards/BOPH/reg_revisions.html

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